



NOTICE OF APPEAL HEARING DECISION

File# PLN-23-00003

An appeal of a Notice of Decision for File# SPL-22-0007

Notice is hereby given on February 24, 2023, of issuance of appeal decision per the City of Walla Walla Municipal Code (WWMC) Section 20.14.090. A copy of the Hearing Examiner decision is attached hereto.

1. **Appellant:** Friends of Yellow hawk Creek.
2. **Representative:** Judith S. Johnson, 209 North Clinton Street, Walla Walla, WA 99362
3. **Location:** Provenance Planned Unit Development (PUD), generally located east of East Alder Street and Wallace Street, Adjacent to Provenance Loop, Chardonnay Court, Reserve Way, Champagne Way, Noble Court, Grapevine Place, and Claret Court.
4. **Description of appealed action:** A Short Plat of the Provenance Planned Unit Development (PUD) open space/common area tract, which would create two separate open space/common area tracts. (File# SPL-22-0007)
5. **Appeal Hearing action:** An appeal of the City of Walla Walla Development Services Director's decision for the approval of the preliminary Short Plat application file # SPL-22-0007.
6. **Appel Hearing conducted:** February 21, 2023.

APPEAL:

This decision may be appealed as provided in Walla Walla Municipal Code sections 20.10.070 and 20.38.

Decisions of the Hearing Examiner on this request, shall have the effect of a final decision of the Walla Walla City Council and may be appealed to the Superior Court of Washington for Walla Walla County, as set forth in the Revised Code of Washington(RCW) Chapter 36.70C, JUDICIAL REVIEW OF LAND USE DECISIONS Land Use Petition Act (LUPA).

A LUPA petition/ appeal must be filed within 21 days of the issuance of the Hearing Examiner decision.

AFFECTED PROPERTY VALUATION:

Under Walla Walla Municipal Code Section 20.14.090, affected property owners may submit to the Walla Walla County Assessor a request to change their property's valuation for property tax purposes notwithstanding any program for revaluation.

City of Walla Walla Development Services
55 E. Moore Street, Walla Walla, WA 99362 (509) 524-4710

Enc. Hearing Examiner Land Use Decision

cc: Appellant, Applicant, Parties of Record, Walla Walla County Assessor

CITY OF WALLA WALLA
LAND USE HEARING EXAMINER

IN THE MATTER OF

File# PLN-23-0003
Appeal of File# SPL-22-007

) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION
)
)

THIS appeal having come on for a closed record appeal hearing in front of the City of Walla Walla Hearing Examiner on February 21, 2023, the Hearing Examiner having admitted into the record Exhibits 1 through 5 as set forth below, hereby submits the following Findings of Fact, Conclusions of Law, and Decision as follows:

I. FINDINGS OF FACT

1. The Appellant is the Friends of Yellowhawk Creek, c/o Judith S. Johnson, 209 North Clinton Street, Walla Walla, WA 99362.
2. **Project Description:** The applicant requested a short plat of the Provenance Planned Unit Development (PUD) open space/common area tract, which would create two separate open space/common area tracts. This short plat does not create any additional residential lots or alter the common areas. To remain in compliance with the conditions of approval for the original and subsequent phases of the PUD, the open space/common area tracts will remain undeveloped and accessible and for the benefit of all the combined current and future homeowners within the Planned Unit Development.
3. **Property Location:** Provenance Planned Unit Development (PUD) is generally located east of East Alder Street and Wallace Street, adjacent to Provenance Loop, Chardonnay Court, Reserve Way, Champagne Way, Noble Court, Grapevine Place, and Claret Court.
4. **Survey depiction of Short Plat:** A depiction of the survey is included with the Notice of Decision.
5. An application was filed for a Short Plat with the City of Walla Walla on June 2, 2022. The applicant requested a short plat of the Provenance Planned Unit Development (PUD) open space/common area tract, which would create two separate open space/common area tracts.
6. This short plat does not create any additional residential lots or alter the boundary of the common areas.
7. The Provenance Planned Unit Development is an existing Planned Unit Development, with existing infrastructure and is zoned Neighborhood Residential.

8. The short plat application was deemed complete on October 11, 2022, and vested to the City of Walla Walla development regulations as of that date.
9. A Notice of Application was issued on October 13, 2022, with a comment period that ended on November 4, 2022. Comment letter(s) were received from the following:
 - 9.1 Michael Miller - October 20, 2022
 - 9.2 Friends of Yellowhawk Creek - November 2, 2022
 - 9.3 Walla Walla 2020 Executive Committee: Robert Carson, Heidi Dobson, Sandy Shelin, Linda Herbert - November 2, 2022
 - 9.4 Frank Nicholson and Julie Harvey - November 3, 2022
 - 9.5 Judith S. Johnson - October 28, 2022
 - 9.6 Doug Newton - November 4, 2022
 - 9.7 Jerald A. Hanson - November 3, 2022
 - 9.8 Linda Herbert - December 21, 2022
10. The proposed short plat was reviewed by the City of Walla Walla for compliance with the City's development standards. Notice was provided on October 14, 2022, to the Site Plan Review Committee (SPRC) members, with comments due November 4, 2022. The City of Walla Walla Engineering Division provided comment on the legal descriptions on the face of plat.
11. The Notice of Decision approving the short plat was issued on December 22, 2022 by the City of Walla Walla. A 14-day appeal period was established ending on January 9, 2023. A timely appeal was filed by the appellant on January 9, 2023.
12. City of Walla Walla Municipal Code Section 20.38.060(C) requires the Hearing Examiner to establish findings of fact and conclusions, which support and justify the decision on an appeal request relative to the following criteria. The Hearing Examiner shall review the record and may grant relief only if the appellant has carried the burden of establishing that one of the following six standards applies:
 - 12.1 The Approving Authority engaged in unlawful procedure or failed to follow prescribed process, unless the error was harmless.
 - 12.1.1 The Appellant has provided no argument on this criterion. The City of Walla Walla made no error in issuing this development permit and the required procedure was followed. As required by WWMC 20.22.040, 20.14.060, and 20.14.065, Development Services followed the correct procedures and processes.
 - 12.1.2 Issue Notice of Application and provide the application materials to the Site Plan Review Committee within 14 days of application determined complete.
 - 12.1.2.1 Notice of Application issued on October 13, 2022.
 - 12.1.2.2 Application sent to SPRC members on October 14, 2022
 - 12.1.2.3 The Notice of Application was also posted on the City's website pursuant to WWMC 20.14.065 on October 13, 2022.
 - 12.1.3 Comment period ended on November 4, 2022
 - 12.1.4 Based on comments received, the requirements for Short Plat review outlined in WWMC 19.24, and the Level II review process in WWMC 20.22.040, the Development Services Director issued a decision approving the short plat on December 22, 2022.

- 12.2 The decision of the Approving Authority is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by the Approving Authority with expertise.
- 12.2.1 Although the Appellants' statement does not identify the criteria in Section 20.38.060 that is the basis for this appeal, the primary argument is that the City was erroneous in granting the Short Plat approval, stating that the short plat does not comply with the City's critical areas ordinance, Chapter 21.04, and "does not show the required 50' stream buffer". The short plat survey, as submitted, is an action to divide the open space/common area tracts, as shown on the survey map as Tract 1 and Tract 2, to identify them on the survey map.
- 12.2.2 This action would not change nor shall involve the existing legal lots of record of the Provenance Planned Unit Development Auditor's file no. 2007-10369, Provenance Replat-Phase 1 under Auditor's file no. 2011-05130, and Provenance Replat - Phase 2 & 3 under Auditor's file no. 2017-06513, which were part of the staff review of the proposed short plat and are attached to this appeal staff report, in the administrative record.
- 12.2.3 This action will not change or modify the existing legal lots of record as shown in the above referenced recorded plats. The addition of a line delineating the current critical area buffer on this short plat survey map is not warranted. The subject open space/common area, existing up land areas, and the rest of the Provenance Planned Unit Development remains protected by the City of Walla Walla critical areas ordinance, Walla Walla Municipal Code Chapter 21.04 and as depicted on the above referenced Provenance PUD plat surveys.
- 12.3. The decision of the Approving Authority is not supported by substantial evidence when viewed in light of the whole record before the Appellate Body.
- 12.3.1 The decision of the City of Walla Walla Development Services Director to approve the preliminary Short Plat is supported by the application materials, the application record, the Walla Walla Comprehensive Plan goals and policies that are identified under the findings section, and the timely comments received. The record is included within the Short Plat Staff Report. The appellant has not shown how the decision is not supported by the record before the Appellate body.
- 12.4 The decision of the Approving Authority is a clearly erroneous application of the law to the facts.
- 12.4.1 The Municipal Code allows the subdivision of the open space/ common area tract subject to compliance with the provisions of applicable municipal code sections. The short plat staff report shows that the proposed action has met the provisions of the Walla Walla Municipal Code. The appellant has not shown any error in the application of the law to the facts.
- 12.5 The decision of the Approving Authority is outside the authority or jurisdiction of the body or officer making the decision.
- 12.5.1 It is the authority of the City of Walla Walla's Development Services Director to issue an administrative decision for approval of the preliminary short plat pursuant to the Municipal Code and more specifically Chapter

20.22, which provides the procedures and authority for preliminary short plat decisions. The Appellant has not challenged this authority.

- 12.6. The decision of the Approving Authority violates the constitutional rights of the party seeking relief.
 - 12.6.1 The Appellants have made no argument that constitutional rights have been violated. This standard is not met.
13. The Walla Walla Hearing Examiner conducted a closed record appeal hearing on February 21, 2023
14. The City of Walla Walla Hearing Examiner considered all evidence within the record in rendering this recommendation.
15. The following exhibits were considered in rendering this decision:
 - 15.1 Ex. 1: SPL22-0007 Appeal Administrative Record;
 - 15.2 Ex. 2 Appeal Application dated January 8, 2023.
 - 15.3 Ex. 3: Notice of Appeal
 - 15.4 Ex. 4: Short Plat Applicant Pre-Hearing Brief.
 - 15.5 Ex. 5: Staff Report.
16. Appearing and testifying for the Appellant was Judith Johnson. Ms. Johnson testified consistent with the appeal materials. She stated that the primary objective for the appeal is to provide the required protection of Yellowhawk Creek. She stated that her group has standing to make this appeal because the impacts on Yellowhawk Creek impact them. She suggested that additional environmental review was required.
17. Providing legal argument on behalf of the short plat Applicant was David Carpman, attorney. He confirmed that no physical development in the common space tract is being proposed. He argued consistent with the pre-hearing brief submitted by the short plat Appellant and admitted into the record.
18. Upon questioning by the Hearing Examiner, Mr. Carpman confirmed that this project is SEPA exempt pursuant to Walla Walla Municipal Code 19.24.010(b)(1). No SEPA determination is necessary because this application is for a two lot short plat.
19. The Hearing Examiner finds that the Appellant has minimally demonstrated standing to bring this appeal. As a party of record, and as Appellant alleges (and of which there is no direct proof), adverse impact from the short plat approval decision, standing is established.
20. However, the Hearing Examiner further finds that the Appellant has not stated any legal or factual basis for this appeal. SEPA determinations have already been rendered, and no appeals have been filed. This short plat application concedes that no further development of the open space tracts will be requested or allowed. The Hearing Examiner finds that there are absolutely no additional impacts to Yellowhawk Creek caused by the approval of this short plat.
21. The Hearing Examiner finds that the Appellant has failed to carry its burden of proof as required by the Walla Walla Municipal Code.
22. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. CONCLUSIONS OF LAW

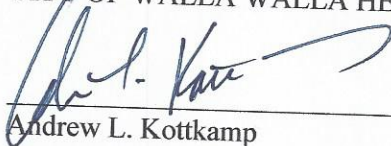
1. The City of Walla Walla Hearing Examiner has been granted the authority to render this decision pursuant to City of Walla Walla Municipal Code Section 20.38.060(C).
2. The City of Walla Walla made no error in issuing this development permit and the required procedure was followed. As required by WPMC 20.22.040, 20.14.060, and 20.14.065, Development Services followed the correct procedures and processes.
3. The decision of the City of Walla Walla Development Services Director to approve the preliminary Short Plat is supported by the application materials, the application record, the Walla Walla Comprehensive Plan goals and policies.
4. The Municipal Code allows the subdivision of the open space/ common area tract subject to compliance with the provisions of applicable municipal code sections. The short plat staff report shows that the proposed action has met the provisions of the Walla Walla Municipal Code
5. It is the authority of the City of Walla Walla's Development Services Director to issue an administrative decision for approval of the preliminary short plat pursuant to the Municipal Code and more specifically Chapter 20.22, which provides the procedures and authority for preliminary short plat decisions.
6. The Appellants have made no argument that constitutional rights have been violated
7. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. DECISION

Based on the above Findings of Fact and Conclusions of Law, the Hearing Examiner determines that the criteria required by City of Walla Walla Municipal Code Section 20.38.060 has not been met, and hereby **DENIES** the appeal.

Dated this 24th day of February, 2023.

CITY OF WALLA WALLA HEARING EXAMINER



Andrew L. Kottkamp